DUE PROCESS AND THE ADAMSON LAW.

The two constitutional questions raised by the so-called Adamson Law are whether it is a regulation of interstate commerce and whether it deprives any one of liberty or property without due process of law. There can be little doubt that the statute will be held a regulation of interstate commerce. If the payment of employees or their representatives for injuries consequent on labor in interstate commerce is within the power of Congress to regulate interstate commerce,[1] it seems clear that such power embraces also the regulation of the payment of employees for their labor in interstate commerce. If the Adamson Law can also be regarded as a regulation of hours of labor of employees engaged in interstate commerce, there is additional ground for holding that Congress is not without power over the subject matter.[2]

But Congress in regulating interstate commerce must not deprive any one of liberty or property without due process of law. Clearly the Adamson Law deprives interstate carriers and their employees of their freedom to contract on terms of their own choosing. This is both a liberty and a property right. The Constitution forbids, however, not all deprivations of liberty or property, but only those which are wanting in due process. Unfortunately the requirements of due process are not defined either in the Constitution or in judicial opinions interpreting the Constitution. We know that a proper exercise of the police power is due process, but we have no very definite guides for determining what is a proper exercise of the police power. The judicial definitions of this power are couched in language so broad that there is ample room for difference of opinion in applying the definitions to concrete cases.

In many cases the difficulty of determining whether a statute is a proper exercise of the police power is lessened by reason of judicial precedents involving statutes substantially similar to the one under consideration. The Adamson Law, however, seems to present a wholly novel question. The Supreme Court, therefore, must determine its constitutionality or unconstitutionality upon considerations peculiar to the particular statute. The test to be applied is the familiar one of whether it is a "fair, reasonable and

[1]Second Employers' Liability Cases (1912) 223 U. S. 1, 32 Sup. Ct. 169.

[2]B. & O. R. R. *v.* Int. Com. Comm. (1911) 221 U. S. 612, 31 Sup. Ct. 621.

appropriate exercise of the police power . . . or . . . an unreasonable, unnecessary, and arbitrary interference with the right of the individual to his personal liberty, or to enter into those contracts in relation to labor which may seem to him appropriate or necessary. . . ."[3]

Whether the Adamson Law is reasonable or arbitrary must depend upon whether or not it is of sufficient public benefit to justify the deprivations of individual liberty and property which it entails. This is a question which cannot be settled on the basis of mere *a-priori* individual preference. A judicial determination of the reasonableness of a statute as an exercise of the police power requires a weighing and balancing of competing considerations—a comparison of deprivations to private interests with contributions to public welfare. In order, therefore, to pass upon the validity of the Adamson Law, the court must form some notion of the extent both of private detriment and of public benefit to be anticipated from its operation, and must in some fashion determine which preponderates.[4]

The liberty which is in issue is the liberty to do the particular thing or things which the statute forbids, and not some abstract conception of liberty. The liberty abridged by the Adamson Law is the freedom of interstate carriers and their employees to bargain, without legal restraint, as to hours and wages. The property interests which are affected are to be measured by the possible economic loss which such restraint on free bargaining may impose upon the parties to the labor contract.

I

The Act must be regarded as coercive upon employees as well as upon employers, since its requirements would be defeated if the employee could bargain with his employer on terms which

[3]Mr. Justice Peckham, in Lochner *v.* New York (1905) 198 U. S. 45, at p. 56, 25 Sup. Ct. 539.

[4]For judicial opinions exemplifying this method of determining the limits of the police power, see Lawton *v.* Steele (1894) 152 U. S. 133, at p. 140, 14 Sup. Ct. 499; Noble State Bank *v.* Haskell (1911) 219 U. S. 104, at p. 110, 31 Sup. Ct. 186; Eubank *v.* City of Richmond (1912) 226 U. S. 137, at pp. 143-144, 33 Sup. Ct. 76; Rideout *v.* Knox (1889) 148 Mass. 368, at pp. 372-373, 19 N. E. 390; Commonwealth *v.* Strauss (1906) 191 Mass. 545, at p. 553, 78 N. E. 136. This method of considering questions of reasonableness is employed not only in balancing the advantages and disadvantages of a particular statute but in comparing the statute before the court with others that have previously been held valid or invalid. See Mr. Justice McKenna's dissenting opinion in Adair *v.* United States (1908) 208 U. S. 161, at p. 189, 28 Sup. Ct. 277.

conflict with those prescribed by the law.[5] The employee, therefore, is deprived of his liberty to make a contract on the basis of a ten-hour day, or on any other basis than that of an eight-hour day, or to accept, pending the report of the Commission instituted to observe and report on the operation of the law, a reduction of compensation below the standard day's wage in force at the time of the passage of the Act. The statute might so operate as to deprive a man of a chance to get work which he would be glad to accept on terms which the carrier would be willing to offer, if free to make such offer as it chose. The Act secures no employment to any man. It does not forbid the carriers to discharge employees now in service. If it should lead the carriers to reduce the number of employees now in service, it would cause a serious deprivation to those who might have been willing, and might have been permitted by the carriers, to continue their employment on terms other than those prescribed by the Act.

The court, if it is to base its judgment of the reasonableness or unreasonableness of the statute on a consideration of its practical results, must estimate the likelihood of any deprivation to employees and would-be employees and the seriousness of such deprivations as may occur. It must do this by theorizing about it. Even if it did not have to pass upon the statute until after it had been in operation for a considerable period, it would have to estimate its effects by theorizing about them, since other factors than the statute might have been instrumental in causing such conditions as may be proved to exist.

In such a realm of speculation anyone but an economic theorist may justifiably fear to tread. Very timidly, therefore, the writer suggests a few considerations in favor of the conclusion that the likelihood of any resulting deprivation to the laboring class is slight. Under no conditions would a railroad be apt

[5]Though no one can object to the constitutionality of a statute unless he is personally affected by its operation, the court will, when a statute is properly before it for review, consider its effects on others than those raising the objection. Thus, in Lochner *v.* New York, *supra*, note 3, in which the question of the constitutionality of a statute limiting the hours of employment in bakeries was raised on a writ of error to review a judgment of the state court sustaining the conviction of an employer for a violation of the statute, the opinion of the court dwells particularly on the deprivation which the statute imposes upon employees. "Of course", says Mr. Justice Peckham at p. 56, "the liberty of contract relating to labor includes both parties to it." The statute was declared to be "an illegal interference with the rights of individuals, both employers and employees, to make contracts regarding labor upon such terms as they may think best, or which they may agree upon with the other parties to such contracts".

wittingly to employ a larger labor force than is actually necessary to handle its traffic. It can be compelled to furnish adequate facilities, and such facilities include an adequate labor force. Moreover, if we can credit a statement put forth by the Brotherhoods to the effect that "in 1913 the wage payments required only 19 cents out of each dollar of revenue earned by western roads,"[6] it would seem to be to the economic advantage of the carriers to have a sufficient force to carry all the traffic that could be obtained. The specific costs for labor would appear to bear such a relation to the total of other specific costs plus general overhead costs that it would be a foolish extravagance for the roads to economize in the number of employees. It would seem, therefore, a reasonable supposition that slight, if any, economic loss would result to laborers from any decrease in employment due to the operation of the statute. Moreover, if the court would look at the problem from the standpoint of the collective interest of the laboring class, any possible loss from a reduction in the number of jobs would be amply counterbalanced by the increase in wages or the reduction in working hours of those whose jobs were continued.

II

The burden which the statute will impose upon the railroads may take any one of three forms or a combination of all three or of any two, as the roads may choose. If no change is made in present methods of operation, the burden will consist of an increase of the wages of the present number of employees. It may however take the form of capital outlay for physical reconstruction, so that trains may be operated on the basis of an eight-hour run. Or it may be caused by an increase in the number of employees, so that trains whose run exceeds eight hours may be operated by two shifts. Various combinations of these three forms of burden are also possible. If the law has to be passed upon before it has been for a considerable time in operation, its hypothetical cost to the roads must be largely a matter of guess-work.

That it will impose on the carriers a substantial increase in expenses, either in wages or interest or both, seems beyond dispute, whether we accept the predictions of railroad officials or not. It does not follow, however, that this imposed increase of expenses of operation will take from the roads any economic advantage that they are entitled under the Constitution to enjoy.

[6] See 31 Political Science Quarterly 548.

Through rate regulation the net income of the carriers is subject to legal limitation. The Interstate Commerce Commission has power to order rates to be reduced to the point where the net returns to the roads do not exceed the amount judicially determined to be a fair return on a fair value. Under the judicial interpretation of the Constitution, the legislature cannot require the rates to be reduced below this point.

If, therefore, after an increase in operating expenses, due to the requirements of the Adamson Law, the profits of the carriers exceed a fair return on a fair value, the due-process clause will not protect them against a further reduction of those profits by action taken by the Interstate Commerce Commission at the instance of shippers. On this supposition as to the effect of the Adamson Law, the roads in contesting its validity are seeking protection only of a chance to earn a surplus over a fair return—an economic opportunity inconsistent with the obligation of public service companies to charge only a reasonable rate.[7] An economic interest on the part of the carriers which due process does not protect against the use of the police power in fixing rates, is surely not an interest entitled to great consideration as a basis for the contention that other legislation designed as an exercise of the police power is unreasonable and arbitrary, and therefore wanting in due process.

If, on the other hand, the result to the carrier of the increase in expenses would be to reduce its net income to a point below what is a fair return on a fair value, the carrier is not remediless. If the return is unfair, the existing rates required by law are confiscatory and the carrier is entitled to increase them. If such increase brings the returns again to the point which is fair, the carrier is then exacting all that it is entitled to exact from the shippers. It has not suffered from an increase of expenses any loss except what might be imposed through rate regulation. The economic interest which has been affected by the Adamson Law

[7]The argument at this point is not that the law will impose no economic burden on any of the roads. Our present legislative and administrative policy in fixing rates aims to secure territorial uniformity of transportation costs as well as reasonableness of such costs. It may therefore happen that a uniform rate which permits one road only a fair return may yield a competing road a considerable surplus over a fair return. The latter road gains through the legislative policy of territorial uniformity something of which it might be deprived if the legislature chose to prescribe rates for each road on the basis of what was a fair return on the fair value of that particular road. But this economic interest of the road is one protected only by present legislative policy in fixing rates and not by the due-process clause of the Constitution against a change in such policy.

is again one which merits little standing under the due-process clause.

There is, indeed, the possibility that for some roads an increase of rates to the limit of what the traffic will bear would not bring the net returns to the point which would be adjudged fair. In such a contingency the deprivation to the road by an imposed increase of expenses would require a greater justification. But, in advance of proof, a court should be slow to assume the possibility of a contingency which is at best exceedingly remote. Even if the economic loss to the roads were considerable, it does not follow that the statute regulating the terms and conditions of employment is lacking in due process. The resulting public advantage of many statutes is deemed sufficiently great to justify severe economic loss on the individual interests on which it falls.

If, as a result of the increase in wage payments or in other costs of operation incident to the enforcement of the statute, the railroads are entitled to increase their rates, the statute indirectly imposes an economic burden on shippers, the incidence of which will be shifted to a certain extent to consumers of articles shipped. This burden, however, would be so widely distributed that it should be regarded as a general public detriment, suffered by the same body in whose interest the statute is passed. If the statute would not be deemed unreasonable because of the injury it imposes on the economic interests of the carrier, *a fortiori* it would not be deemed unreasonable because of economic injury to the collective body which also enjoys its benefits.[8]

So much for the consideration of the private economic interests threatened by the Adamson Law. They are interests which can be expressed in dollars and cents, however impossible it may be to ascertain their value with any satisfactory degree of precision. Some estimate of them, however, the court must make, if it is to base its determination of reasonableness or unreasonableness on objective grounds.

Thus far we have been considering the interest of the carriers in its economic aspects. But an individual interest does not necessarily weigh heavily with the courts because it is of considerable economic value. It may be entitled to slight regard because its legal position is of low rank. Any individual interest which is in

[8] "It would seem that there may be other cases beside the everyday one of taxation, in which the share of each party in the benefit of a scheme of mutual protection is sufficient compensation for the correlative burden that it is compelled to assume." Mr. Justice Holmes in Noble State Bank *v.* Haskell (1911) 219 U. S. 104, at p. 111, 31 Sup. Ct. 186.

the nature of a privilege has little standing as against legislative interference. The most striking example of such an interest is the interest to engage in foreign commerce. It may be denied entirely. For this reason the due-process clause interferes little, if any, with the power of Congress over foreign commerce.[9]

In spite of statements in judicial opinions that there is no difference between the power of Congress over interstate commerce and its power over foreign commerce, it seems clear that Congress could not completely exclude everyone from the business of interstate transportation, except by the exercise of the power of eminent domain.[10] Nevertheless the police power of Congress over interstate carriers greatly exceeds its police power over businesses not affected with a public interest. Public carriers may be required to promote the public convenience as well as the public health, safety and morals.[11] Indirectly the government might cause economic ruin to interstate carriers by constructing and operating competing roads. If the interstate transportation of the country were carried on under conditions deemed unsatisfactory, the government might remedy the evils by engaging in the business itself so as to ensure satisfactory conditions. The possession of such a supervenient right by the government indicates that the private interest is not an interest of high rank in the fold of constitutional protection.[12] As some would phrase it, it is not a vested interest, or not a completely vested interest. It has some of the legal characteristics of what are called privileges. When it is placed in the balance against interference which is to the public advantage, its weight is not great. It takes a smaller weight of public advantage to counterbalance it in the scales of due process,

[9]Buttfield *v.* Stranahan (1904) 192 U. S. 470, 24 Sup. Ct. 349; The Abby Dodge (1912) 223 U. S. 166, 32 Sup. Ct. 310; Brolan *v.* United States (1915) 236 U. S. 216, 35 Sup. Ct. 285; Weber *v.* Freed (1915) 239 U. S. 325, 36 Sup. Ct. 131.

[10]For a presentation of opposing viewpoints on this question see 31 Political Science Quarterly 526-529, 533-534, 539.

[11]Lake Shore & Mich. South. Ry. *v.* Ohio (1899) 173 U. S. 285, 12 Sup. Ct. 465; C. B. & Q. R. R. *v.* Drainage Comm'rs. (1906) 200 U. S. 561, 26 Sup. Ct. 341.

[12]Compare the statement of Mr. Justice Holmes in Noble State Bank *v.* Haskell (1911) 219 U. S. 104, 113, 31 Sup. Ct. 186, in relation to the constitutionality of the Oklahoma statute compelling every state bank to contribute to a guarantee fund for the benefit of depositors of any state bank which might become insolvent. "We cannot say that the public interests to which we have adverted, and others, are not sufficient to warrant the State in taking the whole business of banking under its control. On the contrary we are of opinion that it may go on from regulation to prohibition except upon such conditions as it may prescribe."

than is the case with interests which have no aspects of privileges, interests which are in the class of those termed "vested".

III

We turn now to a consideration of the public benefits of the Adamson Law and a comparison of those benefits with the impairment of individual interests. And here we enter the realm of the imponderable. In this realm what we call estimate and comparison is often little more than uninquisitive individual preference. Such wisdom as men may show in choosing between alternatives which have no common measure is the fruit of powers of insight and of vision rather than of logic. Mr. Justice Holmes has put it most felicitously:

"In the law we only occasionally can reach an absolutely final and quantitative determination, because the worth of the competing social ends which respectively solicit a judgment for the plaintiff or the defendant cannot be reduced to number and accurately fixed. The worth, that is, the intensity of the competing desires, varies with the various ideals of the time, and, if the desires were constant, we could not get beyond a relative decision that one was greater and one was less. But it is of the essence of improvement that we should be as accurate as we can."[13]

These difficulties inherent in all legal reasoning are most extreme in determining the limits of the police power. We do not know with anything approaching exactness what ends the Supreme Court will regard as of public benefit, what means they will consider reasonable and appropriate for the attainment of those ends, and what degree of public welfare they will require to justify a taking of property the extent of which is only approximately determinable. One who would prophesy how the Supreme Court will decide a novel question can do little more than to indicate what they will take account of and what their general attitude of approach is likely to be.

They have so often affirmed that a statute is not to be declared unconstitutional unless its unconstitutionality is free from doubt, that great weight is to be given to the judgment of the legislature, and that the determination of public policy is for the legislature and not for the court, that it would seem that they put the burden of proof on those who maintain that the law is unconstitutional.

[13]Quoted on title page of Frankfurter, Selection of Cases Under the Interstate Commerce Act (Cambridge, Harvard University Press, 1915).

But none of these declarations have kept them from forming their independent judgment on the question of reasonableness.

Nevertheless, these judicial utterances indicate clearly that the members of the Supreme Court are keenly alive to the gravity of substituting their judgment of reasonableness for that of Congress. And the recent course of their decisions manifests that they mean to allow Congress a wide discretion. The only noteworthy exception to this attitude in recent years is the case of *Adair* v. *United States*,[14] which held that Congress could not forbid an interstate carrier to discharge an employee because of his membership in a labor union. In this connection note should be taken of the later case of *Coppage* v. *Kansas*,[15] which declared invalid a state statute making it unlawful for an employer to require of any one, as a condition of securing employment or remaining in employment, an agreement not to become or remain a member of a labor union. But these two cases were both decided by a divided court with strong dissenting opinions. They do not, in theory at least, involve any abandonment of the general canon of interpretation that a statute is not to be declared unconstitutional unless its unconstitutionality is free from doubt. They mean merely that the majority were convinced that the particular statutes in question were clearly unreasonable.

Though the decisions in the Adair case and the Coppage case furnish no precedents for or against the constitutionality of the Adamson Law, the opinions shed light on the attitude of the court towards the most important question of public policy presented by that law. This is the question whether Congress can pass legislation for the purpose of preventing strikes in a business affected with a public interest. "No worthier purpose", said Mr. Justice McKenna in his dissenting opinion in the Adair case, "can engage legislative attention or be the object of legislative action." And he added that "congressional judgment of means should not be brought under a rigid limitation and condemned, if it contribute in any degree to the end."[16]

Nothing in the majority opinions in either the Adair case or the Coppage case, or in the minority opinions in the Coppage case, touches on the question of legislation to prevent strikes. Mr.

[14](1908) 208 U. S. 161, 28 Sup. Ct. 277.

[15](1915) 236 U. S. 1, 35 Sup. Ct. 240.

[16]208 U. S., at pp. 184-185.

Justice Pitney in the majority opinion in the Coppage case asserted that

"in that portion of the Kansas statute which is now under consideration . . . there is no object or purpose, expressed or implied, that is claimed to have reference to health, safety, morals, or public welfare, beyond the supposed desirability of leveling inequalities of fortune by depriving one who has property of some part of what is characterized as his 'financial independence'. In short, an interference with the normal exercise of personal liberty and property rights is the primary object of the statute, and not an incident to the advancement of the general welfare."[17]

Since Mr. Justice McKenna, notwithstanding his dissent in the Adair case, concurred in the Coppage case, it is to be inferred that he did not think that the latter case involved the question of legislation to prevent strikes. Another reason for his concurrence may be that the Kansas statute applied to all employers and not merely to those engaged in business affected with a public interest.[18]

In the Adair case the question whether the statute could not meet the requirements of due process as a regulation of business affected with a public interest was dismissed from consideration by the majority on the ground that the Act was not within the power of Congress as a regulation of interstate commerce. Mr. Justice Harlan, who wrote the majority opinion, seemed to think that the only menace to interstate commerce to which the statute could be related was the "possibility that members of labor organizations would, by illegal or violent measures, interrupt or impair the freedom of commerce among the states". And this hypothetical justification for the statute he denied by saying that the court would not assume that "members of labor organizations will, in any considerable numbers, resort to illegal methods for accomplishing any particular object they have in view".[19]

With ample opportunity to declare that the prevention of strikes in a business affected with a public interest is not of sufficient public welfare to come within the police power, the court has avoided doing so and has permitted the strong statements of

[17]236 U. S., at p. 18.

[18]Mr. Justice McKenna concluded his dissenting opinion in the Adair case as follows: "There are rights which, when exercised in a private business, may not be disturbed or limited. With them we are not concerned. We are dealing with rights exercised in a *quasi*-public business, and therefore subject to control in the interest of the public." 208 U. S. at p. 190.

[19]208 U. S., at p. 179.

Mr. Justice McKenna in favor of such use of the police power to go unchallenged. Let us therefore deal with the question of the constitutionality of the Adamson Law on the assumption that, if it be deemed a not unreasonable measure for securing in an industrial crisis the uninterrupted commercial intercourse of the country, it will be sustained.

In considering this question of reasonableness it is well to bear in mind that it was a condition and not a theory that confronted Congress. Granted that the demands of the railroad employees upon their employers for a reduction of the working day or a raise in pay were exorbitant—if there be any test for determining such a question—the employees had the legal right to make those demands and to cease work in a body if they were not granted. The menace to interstate commerce was not, like that conceived of by Mr. Justice Harlan in his opinion in the Adair case, due to the possibility of illegal and violent action on the part of the employees. It was due to the lawful making of demands by the employees for the improvement of their condition, and the lawful rejection of those demands by the employers for the sake of preventing an increase in their expenses. Can the court, in view of the widespread public apprehension, say that there were no reasonable grounds for the belief that, in the deadlock between the two parties to the controversy, some legislative expedient was necessary to avert a nation-wide calamity?

If it be granted that the situation was one calling for legislative action, it must be borne in mind that any such action would necessarily involve some alteration of the existing law as to freedom of contract. It would involve coercion on the employees or on the employers or on both. Can the court say that there were no reasonable grounds for the legislative choice of a coercion objectionable to the employers rather than to the employees?

Though the means selected by the legislature for attaining a legitimate end are not to be deemed unreasonable merely because some other means might equally well have conserved the public welfare, nevertheless the absence of other practical means lends weight to the importance and therefore to the reasonableness of the means adopted. In view of this consideration, it is important that coercion harmful to the economic interest of the employees would raise more serious questions of constitutionality than those involved in the Adamson Law, for the reason that legal restriction of the earnings of the employees as yet lacks the judicial sanc-

tion given to legal restriction of the earnings of the carriers. And even if a law compelling men to work under conditions which do not satisfy them would be constitutional, its success in attaining the desired results would seem to be dependent largely upon the extent of voluntary compliance by the employees. The railroads could not be run by putting recalcitrant trainmen in jail.

If the court cannot conclude that there were no reasonable grounds for the belief that some form of coercion on the carriers was essential, it must then consider whether there was an absence of reasonable grounds for selecting the particular coercion chosen by Congress. The Adamson Law compels the roads to pay some of their employees as much for eight hours of work as they had previously been paying for ten. If our earlier analysis of the effect of the statute is correct, the economic burden it imposes on the roads is not entitled to great consideration. It is their legal duty to furnish adequate facilities for the conduct of their business. They seemed ready to decline to furnish adequate labor facilities because of the expense of paying the price asked by those who had the labor to sell. Shall the courts say that though they could be compelled to furnish more freight cars, in spite of the expense involved, they cannot be compelled to pay the price necessary to secure an adequate, continuous supply of labor? Is the public importance of an adequate labor force less than that of an adequate number of freight cars? Can Congress compel the carriers to furnish a part of what is necessary to run the roads, but not compel them to furnish another part without which the first is of no avail?

These are questions which the court must consider and squarely and specifically answer before it can base on reasonable grounds a judgment that the Adamson Law is unconstitutional. If there is doubt, the doubts should be resolved in favor of the statute, or else the time-honored judicial declarations to this effect must be regarded as mere scraps of paper.

In passing on these questions it must be remembered that the wage provisions of the Adamson Law are for a limited period. After ten months, at the most, and possibly after seven months, the roads will be free, so far as the statute is concerned, to offer such wages as they choose, and no more. The circumstances under which the Act was passed, and the temporary character of its provisions, indicate clearly that it was designed to meet a crisis. We have judicial sanction for the doctrine that the presence of a crisis lends support to the constitutionality of a legislative

measure designed to meet it. In the *Legal Tender Cases*,[20] Mr. Justice Strong, in considering the reasonableness of means chosen by Congress for the attainment of a given end, observed:

"Plainly to this inquiry, a consideration of the time when they were enacted, and of the circumstances in which the government then stood, is important. It is not to be denied that acts may be adapted to the exercise of a lawful power, and appropriate to it, in seasons of exigency, which would be inappropriate at other times."

Twelve years later, in considering whether legal tender notes issued in war time could be reissued in time of peace, Mr. Justice Gray declared:

"The question whether at any particular time, in war or in peace, the exigency is such, . . . that it is, as matter of fact wise and expedient to resort to this means, is a political question, to be determined by Congress when the question of exigency arises, and not a judicial question, to be afterwards passed upon by the courts."[21]

These declarations of Mr. Justice Strong and of Mr. Justice Gray were made with reference to the reasonableness of means selected by Congress to attain an end judicially determined to be one which Congress had power to promote. They bear directly upon the question of what the court should decide about the reasonableness of the Adamson Law, in case it holds that the prevention of strikes in a public service business is a proper field for legislative action. Shall the court substitute its judgment for that of the legislature as to the urgency for the law at the time it was enacted? Is not Mr. Justice Gray right in regarding such questions as political in their nature rather than judicial?

If the court holds that it will accept the judgment of Congress that the Adamson Law was a measure in furtherance of the public welfare, it should, we submit, have little difficulty in concluding that the public welfare at stake at the time when the law was enacted was amply sufficient to justify the detriment to individual interests which it may cause. If the court should, however, hand down a decision against the constitutionality of the statute, it is sincerely to be hoped that none of the judges will rest content with little more than mere assertion that the law is unreasonable and

[20](1871) 79 U. S. 457, at p. 540.

[21]Juilliard *v.* Greenman (1884) 110 U. S. 421, at p. 450, 4 Sup. Ct. 122.

arbitrary, as has sometimes unfortunately been the case. It is highly important that any judicial opinion opposed to the constitutionality of the law shall analyze carefully and clearly all the competing considerations and base the decision on reasoning that will tend to clarify the mist which now necessarily envelopes all discussions of the police power.

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